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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

PUBLIC COPY

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street, N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, DC 20536

[redacted]

FILE: [redacted] OFFICE: NEBRASKA SERVICE CENTER DATE: JUL 03 2003

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director of the Nebraska Service Center denied the employment-based preference visa petition and the matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is an Oregon corporation that seeks to employ the beneficiary as its director of international sales. The petitioner, therefore, endeavors to classify the beneficiary as a multinational executive or manager pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C).

The director denied the petition on the ground that no qualifying foreign entity exists.

On appeal, counsel submits a brief.

Section 203(b) of the Act, 8 U.S.C. § 1153(b), states, in pertinent part:

> (1) Priority Workers. - - Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> * * *
>
> (C) Certain Multinational Executives and Managers. - - An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager. 8 C.F.R. § 204.5(j)(1). No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement that indicates that the alien is to be employed in the United States in an executive or managerial capacity. Such a statement must clearly describe the duties to be performed by the alien. 8 C.F.R. § 204.5(j)(5).

The petitioner avers that it: (1) manufactures saw chains; (2) employs 235 persons; and (3) has a net annual income of $24 million. According to the petitioner, it currently employs the

beneficiary as a director of international sales, and the beneficiary performs his job duties in the country of Argentina, not in the United States. The petitioner is offering to employ the beneficiary permanently at a salary of $2,700 per week.

The director denied the petition because the petitioner failed to establish that it has a qualifying relationship with a foreign entity. The director's decision was based upon a July 26, 2002 letter from the petitioner's manager of human resources, who stated:

> [The beneficiary's] position with [the petitioner] as Director, International Sales is that of representation of our company here in the United States. He is located in Buenos Aires, Argentina but is employed directly by [the petitioner] here in Milwaukie, Oregon U.S.A. and it is from here that he receives his salary. He is not employed by a foreign business entity, nor does [the petitioner] have any business relationships (partnerships) with any foreign business entities.

On appeal, counsel states that his immigrant visa category can be used when a United States entity directly employs an alien who works abroad for that entity in a managerial capacity. In support of his statement, counsel highlights the term "same employer" in 8 C.F.R. § 204.5(j)(3)(i)(C). Similarly, counsel highlights the term "same employer" in section 203(b)(1)(C) of the Act. Counsel asserts: "There is no requirement in the Immigration and Nationality Act, nor in the regulations of the Immigration and Naturalization Service, that [the] Petitioner establish any relationship with a foreign entity or that the beneficiary be employed by a foreign entity." Although not specifically stated, counsel contends that the beneficiary is eligible for this visa category because the petitioner, which is the beneficiary's employer while he lives in Argentina, is the same employer that is petitioning for him to work in the United States.

Counsel's statements on appeal display a fundamental misunderstanding of this immigrant visa classification. As shall be discussed, both a foreign entity and a United States entity must exist, and must have a qualifying business relationship, in order to be eligible for this immigrant visa classification.

The term "same employer" in section 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C), and 8 C.F.R. § 204.5(j)(3)(i)(C) does not mean, as counsel believes, one entity only, such as a United States company that hires a foreign national to work in a foreign country on its behalf. The term "same employer" in the statutory and regulatory language refers to the United States office of an international organization. Both section 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(c), and 8 C.F.R. § 204.5(j)(3)(i)(C), state that: (1) a firm, corporation, or other legal entity must have

employed the beneficiary overseas; and (2) the petitioner must be the same employer (U.S. office) of the company that employed the beneficiary overseas, or its subsidiary or affiliate.

In *Matter of Church Scientology International*, 19 I&N Dec. 593 (Comm. 1988), the Commissioner stated: "ownership and control are the factors for establishing a qualifying relationship between United States and foreign entities . . . ." He further added: "The ownership and control of both entities must be the same for a finding of a same employer, parent/subsidiary, or affiliate relationship . . . ." It is clear from reading *Matter of Church Scientology International*, that two entities must exist - one in a foreign country and one in the United States; and the petitioner bears the burden of establishing that the foreign and United States entities are related. Counsel's claim that neither the statute nor the regulations requires the existence of a foreign employer has no merit. There is no qualifying entity that employs the beneficiary overseas; therefore, the petitioner is not a "multinational" company. 8 C.F.R. § 204.5(j)(2).

Beyond the decision of the director, because the petitioner cannot show that it maintains a qualifying relationship with a foreign entity, it also cannot establish that the beneficiary's employment by the petitioner in Argentina is qualifying employment. 8 C.F.R. § 204.5(j)(3)(i)(A). However, as the petition is being denied on the ground raised by the director, this issue will not be examined further.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed. The petition is denied.